

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 63 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

-----  
RAJENDRAKUMAR M KHATRI

Versus

RAJENDRA C BHAGAT

-----  
Appearance:

MR VC DESAI for Petitioner

PARTY-IN-PERSON for Respondent No. 1 (absent)

-----  
CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/06/2000

ORAL JUDGEMENT

Heard learned counsel Mr.V.C.Desai for the  
appellant. No one appears for the respondent.

2. This appeal seeks to challenge the grant of

interim relief below Notice of Motion at Ex.5 in Civil Suit No.2570 of 1990 whereby the appellant was restrained from putting up construction in the compound of his bungalow No.6 and not to use the shed already constructed for any purpose other than for residence and from causing any nuisance or annoyance to the respondent.

2. The learned advocate for the appellant has submitted that the construction which was being put up by the appellant was only in the nature of a shutter in the shed which was already existing and for such construction no permission of the Municipal Corporation was required. He has further submitted that, after the impugned order being stayed by this Court, the respondent has left the adjoining premises and the original Civil Suit is also not heard and disposed for about a decade. It is submitted that, in view of the fact that the construction against which the respondent had complained, did not require prior permission from their housing society or the local authority, the trial Court had erred in basing its order on the assumption that such permission was required. Even otherwise, the shed in question was on the other side of the bungalow which was the farthest corner from the compound wall of the bungalow of the respondent and, therefore, any legitimate activity in the shed within the compound of the appellant's bungalow could not have caused any nuisance or annoyance to the respondent. It is submitted that on the basis of a mere apprehension or surmise that the use of alleged illegal construction might create nuisance and annoyance to the neighbours, the interim relief was granted.

3. It is clear from the impugned order that the trial Court has based its prima facie finding of fact mainly on the Commissioner's report which indicated the presence of construction-material and the likelihood of new construction coming up without permission, if such permission were necessary. It also appears that the possibility of some nuisance or annoyance being created by the appellant has also weighed with the trial Court. Such considerations are outweighed by the statutory principle of granting injunction embodied in Section 41 of the Specific Relief Act, which specifically states that an injunction cannot be granted on the ground of nuisance to prevent an act in respect of which it is not reasonably clear that it will be a nuisance. Even otherwise, an interim relief depriving the rightful owner of the use of his own premises ought not to be ordinarily granted merely on the basis of an apprehension of a neighbour that some nuisance or annoyance might be created in future.

4. Therefore, in the facts and circumstances, the impugned order is required to be set aside and the parties are required to be ordered to prove their respective cases in the trial Court. Accordingly, this appeal is allowed and the impugned order below Notice of Motion at Ex.5 in Civil Suit No.2570 of 1990 is set aside. There shall be no order as to costs.

(KMG Thilake)

\$\$\$\$\$\$